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7 CIRCLE BANK

8 UNITED STATES BANKRUPTCY COURT FOR
9 THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In re:
12 CRAIG LEWIS ATAIDE,
13 Debtor.

Bk. No. 10-56276-CN

Chapter 13

R.S. No. RDW-321

14 DECLARATION OF REILLY D.
15 WILKINSON IN SUPPORT OF EX PARTE
16 MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AND CO-DEBTOR
17 STAY

18 Hearing-Ex Parte Motion for Relief from
Automatic Stay and Co-Debtor Stay

19 Date: NO HEARING SET

Time:

20 Place: Bankruptcy Court
280 S 1st St., Courtroom #3070
San Jose, CA 95113

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22
23 I, REILLY D. WILKINSON, declare and state as follows:

24 1. As to the following facts, I know them to be true and if called upon to
25 testify in this matter, I could and would testify to the following:

26 2. I am an attorney at law duly licensed to practice in the State of California.

27 3. I am one of the attorneys of record for CIRCLE BANK, Lender of the
28 above-named Debtor ("Lender").

1 4. Lender asserts that the filing of this petition was in bad faith and is
2 causing ongoing damages to Lender.

3 5. Prior to the present date, on September 10, 2009, CRAIG LEWIS
4 ATAIDE ("Debtor") filed a Petition under Chapter 11 of the Bankruptcy Code in this Court,
5 Case Number 09-57682. On January 19, 2010, Lender and non-filing Debtor entered into an
6 Adequate Protection Order. Debtor failed to carry out the terms of the Order and Lender
7 Obtained relief from stay on March 23, 2010. Further, Debtor has been receiving rents and
8 profits without using them to service the debt. Debtor did not confirm a plan in this prior
9 proceeding and Debtor's case was dismissed on May 17, 2010. After entry of the order, the
10 foreclosure sale was set to take place May 4, 2010.

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12 6. Prior to the present date, On April 14, 2010, non filing Co-Debtor Wife
13 LAURI ATAIDE filed a Petition under Chapter 13 of the Bankruptcy Code in this court, Case
14 No. 10-53775, while Debtor was still in bankruptcy. On June 11, 2010, Lender obtained an
15 Order Vacating Automatic Stay and Co-Debtor Stay ("June 11, 2010 - Order"). CRAIG LEWIS
16 ATAIDE ("Debtor") and non filing Co-Debtor Wife LAURI ATAIDE will be referred to as the
17 "Debtors." After the entry of the Order, Lender's sale was set to take place June 17, 2010.
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19 7. On June 16, 2010, Debtor filed a Petition under Chapter 13 of the
20 Bankruptcy Code, making this the third filing relating to the subject property of this motion, **591**
21 **East Franklin Street, Monterey, CA 93940**, (the "Property"). The present petition was filed
22 while Co-Debtor Wife LAURI ATAIDE's bankruptcy proceeding was still pending. The present
23 petition was also filed just five days after the June 11, 2010 – Order was entered and just one day
24 before Lender's foreclosure sale was scheduled.
25

26 8. Lender is suffering damages and there is no benefit to Debtors by the
27 third bankruptcy filing, other than to stall and delay Lender.

28 9. Debtor and his counsel should be required to pay Lender 's attorney's

1 fees as sanctions in accordance with Rule 11 for filing this latest petition. Debtor and his counsel
2 waited until the last minute to notify the Scheer Law Group of this bankruptcy filing or that they
3 intended on filing bankruptcy, resulting in Lender having to re-schedule its foreclosure sale.

4 10. The time billed by the Scheer Law Group for its services is
5 \$250 per hour, for a total charge of \$550.00. In addition, the Scheer Law Group has spent
6 approximately two hours time preparing this Ex Parte Motion for relief from stay and co-debtor
7 day and anticipates that there will be another hour of time to appear and finalize an order. Such
8 time will be billed at \$250.00 per hour. Accordingly another \$750.00 will be incurred for a total
9 of \$1,300.00. LENDER requests that the automatic stay be vacated for all purposes so that
10 LENDER can proceed with its foreclosure to sell and market the Property.
11

12 I declare under penalty of perjury under the Laws of the State of California that
13 the foregoing is true and correct to the best of my knowledge, information and belief.
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16 SCHEER LAW GROUP, LLP

17 DATED: June 23, 2010

18 /s/ REILLY D. WILKINSON
19 #250086
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